



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: June 24, 2008

CBCA 1013

CARL LUKITSCH,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Carl Lukitsch, pro se, Chapin, SC.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration,
Atlanta, GA, counsel for Respondent.

Before Board Judges **STERN**, **SHERIDAN**, and **KULLBERG**.

KULLBERG, Board Judge.

Mr. Carl Lukitsch (Mr. Lukitsch or appellant), appeals the denial of his claim by the General Services Administration (GSA). Mr. Lukitsch is claiming the cost of repairs in the amount of \$489.70 after the purchase of a 2002 Chevrolet K1500 Suburban truck at a GSA auction. The parties have elected to have this case heard on the written record without a hearing. We deny the appeal for the reasons set forth below.

Background

On November 20, 2007, appellant purchased under GSA contract GSO4F08FBE0887 a 2002 Chevrolet K1500 Suburban truck (truck) for \$9100 at Rawls Auto Auction (Rawls) in Leesville, South Carolina. Appeal File, Exhibits 1, 2, 5-9.¹ The mileage shown on the truck's odometer was 60,077 miles. Exhibit 8.

On the day of the purchase, appellant signed a registration agreement, which provided in relevant part the following:

4. The vehicles are warranted as to description only. Condition is not guaranteed. Repairs may be required.
5. Defects when known are announced. However[,] the absence of any mention of defects does not mean there are none. We strongly encourage you to inspect the vehicles before you bid.

Exhibit 3. The terms and conditions that were printed in the sale catalog for the vehicles to be sold, which included the truck appellant purchased, stated the following:

The Government warrants to the original purchaser that the property listed in the Invitation for Bids will conform to its description. Condition is not guaranteed. If a mis-description is determined before removal of the property, the Government will keep the property and refund any money paid. If a mis-description is determined after removal, the Government will refund any money paid if the purchaser takes the property at his or her expense to a location specified by the contracting officer. No refund will be made unless the purchaser submits a written notice to the contracting officer within 15 calendar days of the date of removal that the property is mis-described and maintains the property in the same condition as when removed. Bidders may be required to submit an independent estimate of repairs from a reputable repair facility as part of their written notice to the contracting officer. After property has been removed, no refund will be made for shortages of property sold by the LOT.

¹ All exhibits are found in the appeal file, unless otherwise noted.

This warranty is in place of all other guarantees and warranties, express or implied. The Government does not warrant the merchantability of the property or its fitness for any use or purpose. The amount of [f] recovery under this provision is limited to the purchase price of the mis-described property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect, or consequential. Clause No. 2 of Standard Form 114c is deleted.

Exhibit 4 at 3.

Before purchasing the truck, appellant checked the oil pressure, the operation of the air conditioning, and the transmission fluid to see if it was burnt. Exhibit 18. He was not allowed to drive the truck before his purchase. *Id.* While driving the truck home from Rawls, he was unable to drive over sixty miles per hour, and the service light switched on. *Id.* Upon arriving at home, he learned that the check engine code indicated an open fuel injector circuit. *Id.*

Appellant had the truck repaired on November 27, 2007, at a cost of \$489.70. Exhibit 10. The costs included parts and labor for replacing the fuel injector wire connector, spark plug wire set, and spark plugs. *Id.* On November 28, 2007, appellant submitted to GSA a claim in the amount of \$489.70 for the cost of those repairs. Exhibit 9. The contracting officer's decision dated December 3, 2007, denied the claim. Exhibit 1. Appellant appeals the denial of his claim.

Subsequent to purchasing the truck, appellant became aware of its repair history, which he calculated as costing more than \$4000 during the ten-month period before the sale. Exhibit 18. Previous maintenance had included repairs to the fuel injection system and replacement of the spark plugs. *Id.* A vehicle condition report from Rawls indicated that the engine warning light was on. Exhibit 13.

Discussion

The issue in this appeal is whether the terms of the contract under which appellant purchased the truck allows reimbursement for the \$489.70 that he spent on repairs. In a case that involved the purchase of a vehicle at a GSA auction under terms and conditions similar to those that applied to appellant's purchase, this Board recently stated the following:

[E]ven in the event of a misdescription of the vehicle, the only remedy to the purchaser is a refund of the purchase price. All

other warranties are excluded. Entitlement to such a refund is dependent upon notice to the sales contracting officer within fifteen days of award or removal of the property from the government location. Return of the property to the Government is also required. Repair of the property and assessment of damages against the Government is not an option under the terms that were agreed to by the buyer and seller.

Patrick C. Sullivan v. General Services Administration, CBCA 936, 08-1 BCA ¶ 33,820, at 167,407. Under the terms of the warranty that applied to the sale of the truck, appellant's only remedy was to notify the contracting officer within fifteen days of the sale and return it in the condition that it was in when he purchased it, but that warranty did not give him "the option of undertaking repairs . . . and then obtaining payment from GSA for the cost of the repairs." *Gaven L. Rouse v. General Services Administration*, GSBCA 15993, 03-1 BCA ¶ 32,210, at 159,301. The contracting officer, therefore, properly denied appellant's claim for the cost of the repairs to the truck he had purchased.

Appellant contends that he should have been made aware of the condition of the truck and its previous repairs, and if he had known that information about the truck, he either would not have purchased it or he would have reduced his bid. Exhibit 18. In a similar appeal involving the purchase at a GSA auction of a vehicle that later needed repairs, this Board held that "the disclaimer as to condition can be overcome, where the purchaser can establish that the Government made a misrepresentation of either a fraudulent or material nature . . . that . . . induced the purchaser to enter into the contract." *Joseph M. Hutchinson v. General Services Administration*, CBCA 752, 08-1 BCA ¶ 33,804, at 167,348. The Board, however, found no basis for relief in that case given the clear representation at the auction that there was no warranty as to the vehicle's condition, and stated the following:

GSA described the model and the mileage and further told appellant and others that the Government was not warranting the merchantability of the property or its fitness for any use or purpose. The combination of the lack of specificity as to components and the disclaimer language clearly defeat any claim based on misrepresentation. It is unfortunate that [appellant] did not get a vehicle in the condition he expected. But the Government did not mislead him.

Id. Appellant was made aware upon signing the registration agreement at Rawls that there was no guarantee as to the condition of the vehicle and that repairs may be required. Even if appellant did not see the reports on the condition of the truck and its repair history before

the sale, the language in the registration agreement gave sufficient warning about the unknown condition of the truck and the potential need for repairs. Under these circumstances, the Government cannot be found to have misrepresented the condition of the truck, and it is not responsible for paying appellant's repair costs.

Decision

The appeal is **DENIED**.

H. CHUCK KULLBERG
Board Judge

We concur:

JAMES L. STERN
Board Judge

PATRICIA J. SHERIDAN
Board Judge